



General Assembly

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Amendment

LCO No. 6407

SB0129906407HRO

Offered by:

REP. BOUCHER, 143rd Dist.

REP. ALBERTS, 50th Dist.

To: Senate Bill No. 1299

File No. 246

Cal. No. 535

**"AN ACT CONCERNING THE EXTENSION OF MEDICAL
MALPRACTICE INSURANCE COVERAGE UPON RETIREMENT."**

1 After the last section, add the following and renumber sections and
2 internal references accordingly:

3 "Sec. 501. Section 52-572h of the general statutes is repealed and the
4 following is substituted in lieu thereof (*Effective October 1, 2005, and*
5 *applicable to actions filed on and after said date*):

6 (a) For the purposes of this section: (1) "Economic damages" means
7 compensation determined by the trier of fact for pecuniary losses
8 including, but not limited to, the cost of reasonable and necessary
9 medical care, rehabilitative services, custodial care and loss of earnings
10 or earning capacity excluding any noneconomic damages; (2)
11 "noneconomic damages" means compensation determined by the trier
12 of fact for all nonpecuniary losses including, but not limited to,
13 physical pain and suffering and mental and emotional suffering; (3)
14 "recoverable economic damages" means the economic damages

15 reduced by any applicable findings including but not limited to
16 set-offs, credits, comparative negligence, additur and remittitur, and
17 any reduction provided by section 52-225a; (4) "recoverable
18 noneconomic damages" means the noneconomic damages reduced by
19 any applicable findings including but not limited to set-offs, credits,
20 comparative negligence, additur and remittitur; (5) "health care
21 institution" means a health care institution licensed pursuant to
22 chapter 368v; and (6) "health care provider" means an individual
23 provider of health care licensed pursuant to chapters 370 to 373,
24 inclusive, 375 to 383c, inclusive, or chapter 400j.

25 (b) In causes of action based on negligence, contributory negligence
26 shall not bar recovery in an action by any person or the person's legal
27 representative to recover damages resulting from personal injury,
28 wrongful death or damage to property if the negligence was not
29 greater than the combined negligence of the person or persons against
30 whom recovery is sought including settled or released persons under
31 subsection (n) of this section. The economic or noneconomic damages
32 allowed shall be diminished in the proportion of the percentage of
33 negligence attributable to the person recovering which percentage
34 shall be determined pursuant to subsection (f) of this section.

35 (c) In a negligence action to recover damages resulting from
36 personal injury, wrongful death or damage to property occurring on or
37 after October 1, 1987, if the damages are determined to be proximately
38 caused by the negligence of more than one party, each party against
39 whom recovery is allowed shall be liable to the claimant only for such
40 party's proportionate share of the recoverable economic damages and
41 the recoverable noneconomic damages except as provided in
42 subsection (g) of this section.

43 (d) The proportionate share of damages for which each party is
44 liable is calculated by multiplying the recoverable economic damages
45 and the recoverable noneconomic damages by a fraction in which the
46 numerator is the party's percentage of negligence, which percentage
47 shall be determined pursuant to subsection (f) of this section, and the

48 denominator is the total of the percentages of negligence, which
49 percentages shall be determined pursuant to subsection (f) of this
50 section, to be attributable to all parties whose negligent actions were a
51 proximate cause of the injury, death or damage to property including
52 settled or released persons under subsection (n) of this section. Any
53 percentage of negligence attributable to the claimant shall not be
54 included in the denominator of the fraction.

55 (e) In any action to which this section is applicable, the instructions
56 to the jury given by the court shall include an explanation of the effect
57 on awards and liabilities of the percentage of negligence found by the
58 jury to be attributable to each party.

59 (f) The jury or, if there is no jury, the court shall specify: (1) The
60 amount of economic damages; (2) the amount of noneconomic
61 damages; (3) any findings of fact necessary for the court to specify
62 recoverable economic damages and recoverable noneconomic
63 damages; (4) the percentage of negligence that proximately caused the
64 injury, death or damage to property in relation to one hundred per
65 cent, that is attributable to each party whose negligent actions were a
66 proximate cause of the injury, death or damage to property including
67 settled or released persons under subsection (n) of this section; and (5)
68 the percentage of such negligence attributable to the claimant.

69 (g) (1) Upon motion by the claimant to open the judgment filed,
70 after good faith efforts by the claimant to collect from a liable
71 defendant, not later than one year after judgment becomes final
72 through lapse of time or through exhaustion of appeal, whichever
73 occurs later, the court shall determine whether all or part of a
74 defendant's proportionate share of the recoverable economic damages
75 and recoverable noneconomic damages is uncollectible from that
76 party, and shall reallocate such uncollectible amount among the other
77 defendants in accordance with the provisions of this subsection. (2)
78 The court shall order that the portion of such uncollectible amount
79 which represents recoverable noneconomic damages be reallocated
80 among the other defendants according to their percentages of

81 negligence, provided that the court shall not reallocate to any such
82 defendant an amount greater than that defendant's percentage of
83 negligence multiplied by such uncollectible amount. (3) The court shall
84 order that the portion of such uncollectible amount which represents
85 recoverable economic damages be reallocated among the other
86 defendants. The court shall reallocate to any such other defendant an
87 amount equal to such uncollectible amount of recoverable economic
88 damages multiplied by a fraction in which the numerator is such
89 defendant's percentage of negligence and the denominator is the total
90 of the percentages of negligence of all defendants, excluding any
91 defendant whose liability is being reallocated. (4) The defendant
92 whose liability is reallocated is nonetheless subject to contribution
93 pursuant to subsection (h) of this section and to any continuing
94 liability to the claimant on the judgment.

95 (h) (1) A right of contribution exists in parties who, pursuant to
96 subsection (g) of this section are required to pay more than their
97 proportionate share of such judgment. The total recovery by a party
98 seeking contribution shall be limited to the amount paid by such party
99 in excess of such party's proportionate share of such judgment.

100 (2) An action for contribution shall be brought within two years
101 after the party seeking contribution has made the final payment in
102 excess of such party's proportionate share of the claim.

103 (i) This section shall not limit or impair any right of subrogation
104 arising from any other relationship.

105 (j) This section shall not impair any right to indemnity under
106 existing law. Where one tortfeasor is entitled to indemnity from
107 another, the right of the indemnitee is for indemnity and not
108 contribution, and the indemnitor is not entitled to contribution from
109 the indemnitee for any portion of such indemnity obligation.

110 (k) This section shall not apply to breaches of trust or of other
111 fiduciary obligation.

112 (l) The legal doctrines of last clear chance and assumption of risk in
113 actions to which this section is applicable are abolished.

114 (m) The family car doctrine shall not be applied to impute
115 contributory or comparative negligence pursuant to this section to the
116 owner of any motor vehicle or motor boat.

117 (n) A release, settlement or similar agreement entered into by a
118 claimant and a person discharges that person from all liability for
119 contribution, but it does not discharge any other persons liable upon
120 the same claim unless it so provides. However, the total award of
121 damages is reduced by the amount of the released person's percentage
122 of negligence determined in accordance with subsection (f) of this
123 section.

124 (o) Except as provided in subsection (b) of this section, there shall be
125 no apportionment of liability or damages between parties liable for
126 negligence and parties liable on any basis other than negligence
127 including, but not limited to, intentional, wanton or reckless
128 misconduct, strict liability or liability pursuant to any cause of action
129 created by statute, except that liability may be apportioned among
130 parties liable for negligence in any cause of action created by statute
131 based on negligence including, but not limited to, an action for
132 wrongful death pursuant to section 52-555 or an action for injuries
133 caused by a motor vehicle owned by the state pursuant to section 52-
134 556.

135 (p) In any action filed on or after October 1, 2005, to recover
136 damages resulting from personal injury or wrongful death, whether in
137 tort or in contract, in which it is alleged that such injury or death
138 resulted from the professional negligence of a health care provider or
139 health care institution in the medical diagnosis, care or treatment of the
140 claimant, the amount of recoverable noneconomic damages shall not
141 exceed two hundred fifty thousand dollars with respect to each
142 defendant health care provider or health care institution."